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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219131.2

DATE: October 28, 1985

MATTER OF: Toxicology Testing Service, Inc.

DIGEST:

Protest that bidders did not compete on an equal basis because of ambiguous term in solicitation is denied where protester has not shown that solicitation was subject to more than one reasonable interpretation. Even assuming, arguendo, that the solicitation was ambiguous, protester did not establish that there was a reasonable possibility that it was displaced due to the unfair competitive advantage afforded another bidder as a result of the defect.

Toxicology Testing Service, Inc. (TTS) protests the award of a contract to PharmChem Laboratories, Inc. under invitation for bids (IFB) No. DTCG23-85-B-31004, issued by the Headquarters, United States Coast Guard, Department of Transportation. The IFB was the second step of a two-step formally advertised procurement of service-wide urinalysis testing of Coast Guard personnel to detect the presence of drugs of abuse. Bids under this IFB were based on each bidder's technical proposal submitted under step one, request for technical proposal (RFTP) No. DTCG23-85-R-31004.

The protester contends that the contract was improperly awarded because it was based on a proposal that offered a test result reporting procedure other than that required by the RFTP. Alternatively, TTS contends that the solicitation was ambiguous, which resulted in firms competing on different bases.

The protest is denied.

Background

This protest centers on the procedures the contractor was to follow in reporting to the Coast Guard the results

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of the urinalysis tests. This aspect of contract performance, among other specification requirements, was included in the RFTP's 9-page "scope of work." Paragraphs 5 and 6 of the "scope of work" stated in pertinent part:

"5. Samples shall be received, tested and results transmitted to submitting Coast Guard commands within 10 working days following receipt."

"6. The contractor shall provide sample bottles and shipping containers to the Coast Guard commands listed below."

Under the heading "Commands," paragraph 6 then identified by name and address 30 different Coast Guard activities, including the 12 Coast Guard districts; the Coast Guard Academy; certain training and logistical activities, and the Coast Guard's European office. Beside each of these "commands" the RFTP provided the number of sample bottles in shipping containers that command was to receive for each line item.

The RFTP also specified procedures for telegraphic reports of test results, as follows:

"II. REPORTS

"1. The contractor shall submit telegraphic Urinalysis Test Reports to Coast Guard commands submitting samples Each report shall indicate which samples submitted by that command were found positive and negative for each substance and each sample shall be identified by the submitting command's sample identification numbers. . . ."

The next paragraph required that the contractor forward to the "submitting Coast Guard commands" by registered mail the reports of test results, along with certain other custodial documents.

At issue here is the meaning of the term "submitting commands" as used in the RFTP to designate the offices to which the contractor was required to return reports of test

results. Approximately 2 months after the step-two bid opening, but prior to award, TTS filed a protest with our Office on the basis that it had become aware of a draft Coast Guard Commandant Instruction, concerning drug urinalysis testing procedures, then being circulated within the agency for comment. This draft instruction, issued more than a month after bids had been opened, indicated that the contractor was to report test results telegraphically and by mail to the 30 "commands" listed in the RFTP's "scope of work" plus one additional activity/location which had not been listed therein.

The protester asserts that a requirement to report to only 31 commands was a different, and less onerous, task than the protester understood the RFTP to impose and on the basis of which it calculated its bid. TTS explains that at the time it competed for this procurement, it held contracts with two Coast Guard districts for the same type of services.^{1/} Under these contracts, TTS was to report the test results directly to the field unit at which the tested Coast Guard employee was stationed. TTS states that it understood the term "submitting commands" as used in the current solicitation to refer to these field units, of which there are more than 600 throughout the Coast Guard, and did not understand it to be limited to the 30 "commands" listed in the RFTP. Its higher bid price, it maintains, reflects the additional cost of reporting test results to more than 600 "clients" instead of 30 or 31.^{2/}

1/ The procurement under protest apparently represents a change from contracting for urinalysis testing on a district-by-district basis to a single, service-wide contract.

2/ The bid results were as follows:

American Medical Laboratories	\$1,006,728.75
PharmChem Laboratories (awardee)	2,302,401.38
Analytical Technologies	2,615,625.00
TTS (protester)	2,755,687.50
CompuChem Laboratories	3,471,187.50

The low bid was withdrawn on the basis of mistake. The high bidder, CompuChem, also an incumbent contractor at the time of this solicitation, asserts that its understanding of "submitting commands" was the same as the protester's.

The protester first contends that PharmChem's technical proposal, which indicated its intent to report only to the 30 "commands" listed in the RFTP, should have been rejected as unacceptable because it did not satisfy the Coast Guard's requirement for reporting to the 600-plus field units. Alternatively, the protester contends that the use of the phrase "submitting commands" in the RFTP created an ambiguity which resulted in firms competing on an unequal basis.

The Coast Guard's position is that it did not, at any time, intend for the contractor to deal with more than 600 field units, but contemplated a nation-wide contract in which the contractor would deal with only 30 sites. The RFTP was consistent with this intent, the Coast Guard maintains, because only those 30 sites were listed as destinations for the sample bottles. The agency maintains that the solicitation was not ambiguous and that PharmChem's proposal was consistent with its requirements.

Discussion

The government's specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. An ambiguity exists if specifications are subject to more than one reasonable interpretation. An award under a solicitation is improper if a solicitation contains an ambiguity which causes bidders to compete on an unequal basis and it is uncertain which bidder, absent the ambiguity, would have been low. Wheeler Bros., Inc.; Defense Logistics Agency--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 C.P.D. ¶ 388.

The essence of this protest is that TTS, having held two district-level contracts for testing services under which reports were furnished directly to field units, allegedly interpreted the term "submitting commands" used in this nation-wide, headquarters-level solicitation as referring to field units and, as a consequence, calculated a bid price which reflected a more burdensome reporting requirement than the Coast Guard states it intended and the successful offeror contemplated in its proposal.

The record in this case is limited insofar as it relates to the terms of TTS's two prior contracts, how they contributed to the firm's alleged interpretation of the current solicitation, and precisely what impact this interpretation had on TTS's bid prices. TTS has not provided us with the text of its two prior contracts, or any analysis thereof, which would show that their terms bore such a similarity to the current solicitation as to lead the protester to the conclusion that the reporting requirements were identical. Specifically, the protester does not allege that its two prior contracts used the term at issue here--"submitting commands"--to refer to field units. The protester's interpretation is not evident from its technical proposal and the protester makes no claim that it should have been. The protester does point to the almost 20 percent differential between its bid price and the awardee's as indicative of its interpretation and the competitive prejudice it caused. We note that the bid results were available for 2 months prior to when the protest was filed but apparently did not cause the protester concern until it became aware of the draft Coast Guard instruction. We have no reason to believe that the number of samples to be analyzed varied with the protester's interpretation, only the complexity and expense of transmitting the test results. How much of the differential in bid prices may be attributable to the protester's interpretation of "submitting commands" it does not explain.

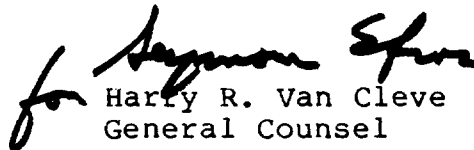
Paragraph 5 of the scope of work states that "samples shall be received, tested and results transmitted to submitting Coast Guard commands." In the next paragraph, it is stated that "the contractor shall provide sample bottles and shipping containers to Coast Guard commands listed below." The list of 30 activities and their addresses which then follows is under the heading "Command." As the Coast Guard points out, this is the only provision in the RFTP "that associates 'commands' with an address and number of 'commands.'" The reasonable conclusion, we believe, is that it is these entities to which the Coast Guard referred as "commands."

The protester also contends that a memorandum accompanying the Coast Guard's determination to proceed with an award to PharmChem notwithstanding TTS's protest supports the protester's interpretation of the RFTP. The purpose of the memorandum, which preceded the determination

to proceed with award, was to obtain authorization to do so from the Assistant Secretary of Transportation on the basis that otherwise the testing for drugs of abuse throughout the Coast Guard would be seriously disrupted.

By way of background, the memorandum set forth the grounds for protest and the Coast Guard's position that the draft Commandant's instruction did not conflict with the specifications for the proposed contract. In further discussing the draft instruction, however, the memorandum appears to suggest that for the contractor to report test results only to "district offices" would represent a change to the contract necessitating a downward equitable adjustment in the contract price. Although consistent with the protester's position, this statement cannot at the same time be reconciled with the position taken in the same memorandum that the draft Commandant instruction does not represent a change from the specification requirements. Since these statements appear in a document which was prepared after the protest was filed and was primarily for the purpose of demonstrating the urgency of the situation which would justify proceeding with award, we think they merit little weight.

On the basis of this record, we do not believe the protester has shown the solicitation to be susceptible to more than one reasonable interpretation. In addition, even if we were to assume for purposes of argument that the solicitation was ambiguous, the protester has not established that there was a reasonable possibility that it was displaced due to the unfair competitive advantage afforded another bidder as a result of this defect. The protest is therefore denied.


for Harry R. Van Cleve
General Counsel